

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Edward John McNamara
SSN XXX-XX-1880
Therese Marie McNamara
SSN XXX-XX-0384

CHAPTER 7 CASE

CASE NO. 04-43112 RJK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. U.S. Bank, N.A., as Trustee, successor by merger to Firststar Bank, N.A. successor in interest to Firststar Bank Milwaukee, N.A., as Trustee for Salomon Brothers Mortgage Securities VII, Inc. Floating Rate Mortgage Pass-Through Certificates Series 1999-NC5 (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 11, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 5, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The

petition commencing this case was filed on June 2, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$412,250.00, as evidenced by that certain mortgage deed dated November 11, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated November 11, 1999, executed by Edward J. McNamara and Therese M. McNamara, husband and wife, as joint tenants, recorded January 10, 2000, as Document No. 1479680, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Anoka County, Minnesota and is legally described as follows to-wit:

Lot 2, Block 2, Timber River Estates.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of September 23, 2004, Debtor is delinquent in the making of monthly payments as required for the months of May, 2003 through September, 2004, inclusive, in the amount of \$4,272.12 each; accruing late charges of \$3,846.25 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$490,000.00 subject to Secured Creditor's mortgage in excess of \$509,928.03.

The property is also subject to a second mortgage in favor of US. Bank in excess of \$68,000.00.

Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 23rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

1479680

NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612
Loan Number: 0000323124

12-32-25-21-0007

[Space Above This Line For Recording Data]

WALSH TITLE & REAL ESTATE
SERVICES, INC.
901 WEST HIGHWAY 10
ANOKA, MN 55303
C 310 5936

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **November 11, 1999**
The mortgagor is
EDWARD J. MCNAMARA AND THERESA M. MCNAMARA, HUSBAND AND WIFE, AS JOINT
TENANTS

("Borrower"). This Security Instrument is given to
NEW CENTURY MORTGAGE CORPORATION

which is organized and existing under the laws of **CALIFORNIA**, and whose
address is **18400 VON KARMAN, SUITE 1000**
IRVINE, CA 92612

("Lender"). Borrower owes Lender the principal sum of
Four Hundred Twelve Thousand, Two Hundred Fifty and No/100 Dollars (U.S. \$ **412,250.00**).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on
December 1, 2029 and for interest at the yearly rate of **8.6000** percent.

This Security Instrument secures to Lender: (a) the repayment of
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/PHLMC UNIFORM INSTRUMENT

Form 924 8/90
Amended 12/93
Page 1 of 2
VMP MORTGAGE FORMS - (800) 821-7301

Form 924 8/90
Amended 12/93

Initials: *dm*

EXHIBIT A

0000323124

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **ANOKA** County, Minnesota:
LOT 2, BLOCK 2, TIMBER RIVER ESTATES.

A.P.N.: 12-32-25-21-0007

which has the address of **5259 172ND AVENUE NORTHWEST**, **ANDOVER**
 Minnesota **55304** (Zip Code) ("Property Address");

(Street, City).

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an

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CASE NO. 04-43112 RJK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 23, 2004, Debtor is delinquent for the monthly payments as required for the months of May, 2003 through September, 2004, in the amount of \$4,272.12 each; accruing late charges of \$3,846.25 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$490,000.00 subject to Secured Creditor's mortgage in excess of \$509,928.03.

The property is also subject to a second mortgage in favor of US. Bank in excess of \$68,000.00.

Since this is a liquidation case, no reorganization is being attempted.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 23rd day of September, 2004.

WILFORD & GESKE

By /s/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

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CASE NO. 04-43112 RJK

**AFFIDAVIT OF
TARSHA RUCKER**

Debtor.

Tarsha Rucker, being first duly sworn on oath, deposes and states:

1. That she is the U.S. Facilitator of OCWEN Federal Bank, FSB.

2. U.S. Bank, N.A., as Trustee, successor by merger to Firststar Bank, N.A. successor in interest to Firststar Bank Milwaukee, N.A., as Trustee for Salomon Brothers Mortgage Securities VII, Inc. Floating Rate Mortgage Pass-Through Certificates Series 1999-NC5, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated November 11, 1999, executed by Edward J. McNamara and Therese M. McNamara, husband and wife, as joint tenants, recorded January 10, 2000, as Document No. 1479680. The property is located in Anoka County, Minnesota and is legally described as follows, to-wit:

Lot 2, Block 2, Timber River Estates.

3. That she has reviewed the account records relating to the McNamara's mortgage loan, account no. 99872210.

4. That as of September 9, 2004, the following amounts were owing on this account:

| | |
|---|--------------|
| Unpaid Principal: | \$402,934.13 |
| Interest through September 9, 2004 | 55,338.74 |
| Attorney's Fees: | 700.00 |
| Late Charges: | 3,846.25 |
| Returned Check Fee: | 50.00 |
| Stipulation Setup: | 600.00 |
| Bankruptcy Fees and Costs: | 600.00 |
| Attorney Fee & Collection Cost: | 278.91 |
| Foreclosure Fees and Costs: | 4,631.96 |
| Property Valuation and Inspection Fees: | 537.00 |
| Escrow Advance: | 40,411.04 |

| | |
|---------------|---------------------|
| TOTAL: | \$509,928.03 |
|---------------|---------------------|

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of May, 2003 through September, 2004 in the amount of \$4,272.12 each.

6. This affidavit is given in support of the motion of U.S. Bank, N.A., as Trustee, successor by merger to Firststar Bank, N.A. successor in interest to Firststar Bank Milwaukee, N.A., as Trustee for Salomon Brothers Mortgage Securities VII, Inc. Floating Rate Mortgage Pass-Through Certificates Series 1999-NC5 for relief from the automatic stay.

OCWEN FEDERAL BANK, FSB

By

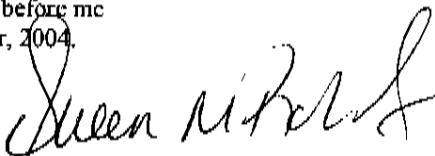


 TARSHA RUCKER

U.S. Facilitator

Subscribed and sworn to before me

This 9 day of September, 2004.

Notary Public


 Queen Michelle Roberts
 My Commission 0D145947
 Expires August 28, 2006


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Debtor.

ORDER

The above entitled matter came on for hearing upon motion of U.S. Bank, N.A., as Trustee, successor by merger to Firststar Bank, N.A. successor in interest to Firststar Bank Milwaukee, N.A., as Trustee for Salomon Brothers Mortgage Securities VII, Inc. Floating Rate Mortgage Pass-Through Certificates Series 1999-NC5 (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 14, 2004, at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated November 11, 1999, executed by Edward J. McNamara and Therese M. McNamara, husband and wife, as joint tenants, recorded January 10, 2000, as Document No. 1479680 covering real estate located in Anoka County, Minnesota, legally described as follows, to-wit:

Lot 2, Block 2, Timber River Estates

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court